

STATE OF MICHIGAN
COURT OF APPEALS

USAA CASUALTY INSURANCE COMPANY,

Plaintiff-Appellant,

v

FELISA MARTIN, Guardian Ad Litem of
LAZZARIA MARTIN,

Defendant-Appellee.

UNPUBLISHED

July 20, 2010

No. 292307

Wayne Circuit Court

LC No. 07-727323-NF

Before: O'CONNELL, P.J., and METER and OWENS, JJ.

PER CURIAM.

In this declaratory action to determine an insurer's obligation to pay continuing no-fault personal injury protection (PIP) benefits, plaintiff appeals as of right from a circuit court order granting defendant's motion for summary disposition under MCR 2.116(C)(8). We reverse and remand for further proceedings. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This Court reviews de novo a trial court's decision regarding a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion under MCR 2.116(C)(8) tests the legal sufficiency of a complaint by the pleadings alone. *Maiden*, 461 Mich at 119-120. "A motion under MCR 2.116(C)(8) may be granted only where the claims alleged are so clearly unenforceable as a matter of law that no factual development could possibly justify recovery." *Maiden*, 461 Mich at 119 (citation and internal quotation marks omitted).

Relying on *Rott v Std Accident Ins Co*, 299 Mich 384; 300 NW 134 (1941), a case cited by defendant, the trial court determined that plaintiff's complaint for a declaratory judgment was improper because the case involved disputed facts. We disagree with this ruling.

MCR 2.605 governs actions for declaratory judgments. MCR 2.605(A)(1) states: "In a case of *actual controversy* within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." (Emphasis added.) Further, MCR 2.605(B) provides that "the right to trial by jury may be demanded" in an action for declaratory relief. Decisions of this Court and the Michigan Supreme Court recognize that declaratory judgment actions are appropriate to determine liability for future expenses in no-fault actions. See, e.g.,

Rose v State Farm Mut Auto Ins Co, 274 Mich App 291, 294; 732 NW2d 160 (2007), and *Manley v Detroit Auto Inter-Ins Exch*, 425 Mich 140, 157; 388 NW2d 216 (1986).

As explained in *Allstate Ins Co v Hayes*, 442 Mich 56, 64-65 n 8; 499 NW2d 743 (1993):

Narrow interpretations of the availability of declaratory relief were decisively rejected with the advent of GCR 1963, 521. [3 Martin, Dean & Webster, Michigan Court Rules Practice (3d ed), at 423.] The drafters of the court rule recognized the usefulness of the action for declaratory judgment and intended “to ‘provide for the broadest type of declaratory judgment procedure.’” *Id.* at 423, quoting Committee Notes to GCR 1963, 521.

The discussion in *Allstate Ins Co* refers to *Rott* as illustrating the formerly narrow scope of declaratory relief, before the adoption of GCR 1963, 521. Former GCR 1963, 521, is analogous to current MCR 2.605. See *Durant v Michigan*, 456 Mich 175, 209-210 n 37; 566 NW2d 272 (1997). Thus, the case law cited by defendant, and relied on by the trial court, to conclude that declaratory relief is inappropriate in cases involving disputed questions of fact has been abrogated by the adoption of more recent court rules governing declaratory relief. *Rose* and *Manley* illustrate the appropriate use of a trier of fact to resolve factual disputes in declaratory judgment actions. The trial court erred in granting defendant’s motion for summary disposition on the basis that the existence of disputed questions of fact precluded an action for declaratory relief.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Peter D. O’Connell
/s/ Patrick M. Meter
/s/ Donald S. Owens